

Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN CULP and BETH E. CULP, a marital community,

No. 3:23-cv-5082

Plaintiffs,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY, a foreign insurance company,

STIPULATED PROTECTIVE ORDER

Defendant.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

**STIPULATED PROTECTIVE ORDER
CAUSE NO. 3:23-CV-05082-JNW**

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 1) sensitive personal information, such as Social Security Numbers and financial records.
5 This includes tax records, bank account statements and bookkeeping records that were not
6 previously provided to State Farm as part of the claims process or underwriting process;

7 2) Claims training and procedure manuals and other materials that contain trade secret,
8 confidential, internal-use only, and proprietary research, development, and/or commercial
9 information of State Farm relating to first-party property coverage and/or claims that
10 counsel believes may be responsive to discovery;

11 3) Materials relating to claim personnel involved in handling and/or adjusting the subject
12 claim, including but not limited to evaluations, compensation, employee performance
13 reviews, and/or other sensitive, personal, non-job related, and private information that
14 counsel believes may be responsive to discovery;

15 4) claims-handling and claims process materials, underwriting materials, insurance pricing,
16 and/or documents relating to State Farm policies and practices that counsel believes may
17 be responsive to discovery; and

18 5) Proprietary, confidential, competitively sensitive, internal-use only or trade secret
19 information of State Farm and its related entities, including but not limited to financial
20 information, training materials, and contracts or agreements with third parties that counsel
21 believes may be responsive to discovery.

22 The parties to this suit ("Parties") reserve the right to seek by stipulation or motion to
23 enlarge this list as discovery proceeds in the event that any party seeks additional information not
24 included in the above description which is entitled to protections and is otherwise discoverable
25 under Federal Rule of Civil Procedure 26.

26 3. SCOPE

27 3.1 The protections conferred by this agreement cover not only confidential material
28 (as defined above), but also (1) any information copied or extracted from confidential material; (2)

1 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
2 conversations, or presentations by parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover information that is in
4 the public domain or becomes part of the public domain through trial or otherwise. Confidential
5 material is not considered part of the public domain at trial or otherwise when parties adhere to
6 sections 4.2 and 4.3. All such information retains its confidential protections if use was pursuant
7 to a Protective Order, Confidentiality Agreement, Order of a Court, governmental subpoena,
8 regulatory compliance activity, or inadvertent disclosure that was subsequently remedied.

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10 3.2 Nothing in this Agreement shall be construed to prohibit, restrict, or require State
11 Farm to obtain an authorization for the retention, use, or disclosure of nonpublic Confidential
12 Information and records as authorized or as reasonably required by its Information Retention
13 Schedules, federal or state law or regulation, or court order, rule, including, but not limited to,
14 Medicare authorities if reporting is applicable, to a third-party for analysis of records in anti-fraud
15 efforts (using non-fraudulent data to benchmark), in reporting for rate-making or otherwise, and
16 in paperless electronic claim systems for permissible insurance functions. Nothing in this order
17 shall prevent State Farm from retaining all documents necessary for regulatory compliance
18 activities, nor from producing any documents necessary for regulatory compliance activities.
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21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. Named Plaintiffs John Culp and Beth E. Culp (“Plaintiffs”) may
23 use confidential material that is disclosed or produced by State Farm in connection with this case
24 only for prosecuting, defending, or attempting to settle this litigation.

25 Confidential material may be disclosed only to the categories of persons and under the
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1 conditions described in this agreement. Confidential material must be stored and maintained by a
2 receiving party at a location and in a secure manner that ensures that access is limited to the persons
3 authorized under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the designating party, a receiving party may disclose any
6 confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees
8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of State
10 Farm to whom disclosure is reasonably necessary for this litigation;

11 (c) experts and consultants to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).
13 (The Parties shall provide signed Acknowledgments with any expert disclosures (Fed. R. Civ. P.
14 26(a)(2)) or at the time of testimony at deposition or trial);

15 (d) the court, court personnel, and court reporters and their staff, mediators,
16 arbitrators, jury consultants, or in trial before a judge and/or jury;

17 (e) copy or imaging services retained by counsel to assist in the duplication of
18 confidential material, provided that counsel for the party retaining the copy or imaging service
19 instructs the service not to disclose any confidential material to third parties and to immediately
20 return all originals and copies of any confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
25 be separately bound by the court reporter and may not be disclosed to anyone except as permitted

1 under this agreement;

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information;

4 (h) the Division of Insurance, law enforcement officers and/or other
5 government agencies, as permitted or required by applicable state and federal law.

6 4.3 Filing Confidential Material. Before filing confidential material or discussing or
7 referencing such material in court filings, the filing party shall confer with the designating party,
8 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
9 remove the confidential designation, whether the document can be redacted, or whether a motion
10 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
11 designating party must identify the basis for sealing the specific confidential information at issue,
12 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
13 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
14 the standards that will be applied when a party seeks permission from the court to file material
15 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
16 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
17 Failure to satisfy this requirement will result in the motion to seal being denied without prejudice.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
20 that designates information or items for protection under this agreement must take care to limit
21 any such confidential designation to specific material that qualifies under the appropriate
22 standards. The designating party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify, so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this agreement.

1 Designations that are shown to be clearly unjustified or that have been made for an
2 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to
3 impose unnecessary expenses and burdens on other parties) may expose the designating party to
4 sanctions.

5 If it comes to a designating party's attention that information or items that it designated for
6 protection do not qualify for protection, the designating party must promptly notify all other parties
7 that it is withdrawing the mistaken designation.

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10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "CONFIDENTIAL – SUBJECT TO PROTECTIVE
17 ORDER" to each page that contains confidential material. If only a portion or portions of the
18 material on a page qualifies for protection, the producing party also must clearly identify the
19 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the
21 designating party must identify on the record, during the deposition or other pretrial proceeding,
22 all protected testimony, without prejudice to their right to so designate other testimony after
23 reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
24 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
25 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information

1 at trial, the issue should be addressed during the pre-trial conference.

2 (c) Other tangible items: the producing party must affix in a prominent place
3 on the exterior of the container or containers in which the information or item is stored the word
4 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” If only a portion or portions of the
5 information or item warrant protection, the producing party, to the extent practicable, shall identify
6 the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the designating party’s
9 right to secure protection under this agreement for such material. Upon timely correction of a
10 designation, the receiving party must make reasonable efforts to ensure that the material is treated
11 in accordance with the provisions of this agreement.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party may challenge a designation of confidentiality at
14 any time. Unless a prompt challenge to a designating party’s confidentiality designation is
15 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
16 significant disruption or delay of the litigation, a party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge promptly after the original
18 designation is disclosed.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
20 regarding confidential or non-waiver of privilege designations without court involvement. Any
21 motion regarding confidential or non-waiver of privilege designations or for a protective order
22 must include a certification, in the motion or in a declaration or affidavit, that the movant has
23 engaged in a good faith meet and confer conference with other affected parties in an effort to
24 resolve the dispute without court action. The certification must list the date, manner, and
25 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a

1 telephone conference.

2 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
3 intervention, the designating party may file and serve a motion to retain confidentiality or privilege
4 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
5 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
6 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
7 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
8 the material in question as confidential until the court rules on the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
10 LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any information or items designated in this action as “CONFIDENTIAL – SUBJECT
13 TO PROTECTIVE ORDER,” that party must:

14 (a) promptly notify the designating party in writing and include a copy of the
15 subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to
17 issue in the other litigation that some or all of the material covered by the subpoena or order is
18 subject to this agreement. Such notification shall include a copy of this agreement; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by
20 the designating party whose confidential material may be affected.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
23 material to any person or in any circumstance not authorized under this agreement, the receiving
24 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
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1 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
2 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
3 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
4 Bound" that is attached hereto as Exhibit A.

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6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 The inadvertent or unintentional disclosure of confidential information shall not be deemed
9 a waiver in whole or in part of State Farm's claim of protection pursuant to this Protective Order.
10 Any such inadvertently or unintentionally disclosed information shall be designated as confidential
11 as soon as reasonably practicable after a receiving party becomes aware of the erroneous disclosure
12 and shall thereafter be treated as such by all receiving persons under the terms of this Protective
13 Order. Upon receipt of the properly designated documents, the receiving party must return or
14 destroy the non-designated set within three (3) days of being informed of the inadvertent
15 disclosure. If the receiving party destroys the documents, then the receiving party must provide
16 written certification of the destruction to the designating party within three (3) days of receipt of
17 the properly designated documents. In addition, the production or disclosure by either party of an
18 attorney-client privileged, attorney work product, or other protected document or information,
19 whether inadvertent or otherwise, shall not be deemed a waiver of the privilege, work product, or
20 other protection or immunity from discovery by the party in this or any subsequent state or federal
21 proceeding pursuant to Federal Rule of Evidence 502 regardless of the circumstances of disclosure.
22 If any party becomes aware of the production or disclosure of such protected information, that
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1 party shall provide written notice, to the designating party, of such production or disclosure within
2 three (3) days after it becomes aware that protected information has been disclosed or produced.
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4 10. NON TERMINATION AND RETURN OF DOCUMENTS

5 Within sixty (60) days of the final determination of this action, including all appeals, State
6 Farm must provide the receiving party with a list of documents that have been designated as
7 confidential by State Farm in this litigation and produced to the receiving party, and which State
8 Farm wants destroyed. With 14 days after the receipt of this list, the receiving party must shred (if
9 paper) or delete (if electronic) all confidential materials themselves, as well as all copies, extracts,
10 notes, reports, memoranda, summaries thereof, or other documents containing such confidential
11 information. Alternatively, the parties may agree upon appropriate methods of destruction.
12 Additionally, a receiving party that discloses State Farm's confidentially designated material to
13 experts and consultants shall provide written confirmation that the receiving experts and
14 consultants have returned and/or destroyed all confidential material received (without limitation
15 to the foregoing list of documents) as well as all notes, memoranda, and other materials derived
16 from or in any way revealing information relating to the confidential material.
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18 Notwithstanding this provision, counsel may retain one archival copy of all documents
19 filed with the court, subject to all requirements of this Protective Order, for a period of seven (7)
20 years after the termination of this action, including all appeals. Counsel's one archival copy is for
21 the sole and exclusive purpose of complying with any Rule of Professional Conduct and ethical
22 obligations owed to their respective clients. After such period, all materials that contain
23 confidential information must be shredded (if paper) or deleted (if electronic).
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1 The confidentiality obligations imposed by this agreement shall remain in effect until the
2 designating party agrees otherwise in writing or a court orders otherwise.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: October 26, 2023

s/Nicholas A. Thede

3 Nicholas A. Thede, WSBA #43765
4 Scott W. MacLaren, WSBA #53241
5 Foreman Sturm Thede
6 3519 N.E. 15th Ave., Suite 489
Portland, OR 97212
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7 DATED: October 26, 2023

s/Kara A. Tredway

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Attorneys for Defendant State Farm Fire and Casualty Company

1 PURSUANT TO STIPULATION, IT IS SO ORDERED
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4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
5 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
6 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
7 documents, including the attorney-client privilege, attorney work-product protection, or any other
8 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
9 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
10 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
11 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
12 segregation of privileged and/or protected information before production. Information produced
13 in discovery that is protected as privileged or work product shall be immediately returned to the
14 producing party.

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16 DATED: November 3, 2023

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20 Jamal N. Whitehead
United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury I have read in its entirety and understand the Stipulated Protective Order that was issued by United States District Court for the Western District of Washington on [date] in the case of *et al. v. State Farm Fire & Casualty Company*, Cause No. 3:23-cv-05082-JNW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand knowledge that failure to so comply could expose me to sanctions and punishment in the event of contempt. I solemnly promise that I will not disclose in any manner any information or that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

Within sixty (60) days of the final determination of this action, I shall provide written confirmation to counsel of record for Plaintiff(s) that documents produced by State Farm (or disclosing the contents of documents) designated by State Farm as "Confidential" ("Confidential Information") has been shredded (if paper) or deleted (if electronic), including the shredding and deletion of all copies, extracts and summaries thereof.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

1 Signature: _____
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[PROPOSED] STIPULATED PROTECTIVE ORDER- 15
CAUSE NO. 3:23-CV-05082-JNW

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